FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL WRIT PETITION NO. 1165 OF 2004.

Shailendra Shashikant Gadhve. .. Petitioner.
vs.
Pooja Shailendra Gadhve & ors. ..Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders. : Court's or Judge's orders

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Shri Rajesh Datar for the petitioner.
Shri Harshad Palwe for respondent No.1
Shri A.S. Shitole, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 24-2-2005.

P.C.:

1. Heard learned Counsel for the petitioner, learned Counsel for respondent No.1 and the learned A.P.P. for the State.

2. The petitioner is challenging the order passed by the trial Court on the application filed by the respondent No.1-wife seeking maintenance under section 125 of the Criminal Procedure Code. Petitioner did not pay maintenance amount as per direction given by the Court. Respondent No.1-wife preferred an application for striking out defence of the husband-petitioner herein. The trial Court allowed the said application and struck of defence of the husband-

petitioner. Against the said order criminal revision application was filed by the husband before the 2nd Additional Sessions Judge, Nasik. The said revision application was dismissed on the ground that revision application is not maintainable. Petitioner has, therefore, preferred this criminal writ petition under Article 227 of the Constitution of India.

3. The application filed by the respondent No.1- wife for striking out defence was purportedly under Order 39 Rule 2 of the Civil Procedure Code. To my mind, there is no provision in the Criminal Procedure Code which would permit or empower the Magistrate to strike out defence in a proceeding filed by the wife under section 125 of the Cr.P.C. The impugned order, therefore, will have to be set aside. Petitioner has deposited a further sum of Rs. 12,000/- in the trial Court on 14.7.2004/ Respondent No.1- wife shall be permitted to withdraw the said amount. The impugned order is set aside.

4. Under the provisions of section 125 sub-clause (3) of the Criminal Procedure Code, if a person who is ordered to pay

maintenance fails to pay maintenance without sufficient cause, the Magistrate has power to issue warrant for levying the amount in the manner provided for levying fine as provided under the Criminal Procedure Code. The Magistrate may, if so desire, on account of failure on the part of the petitioner to pay the amount ordered, take such steps and/or issue warrant against the petitioner. Respondent No.1-wife to apply to the Magistrate under provisions of sub-clause (3) of section 125. Upon such application being made by the wife, the Magistrate is directed to decide the said application within four weeks. Writ Petition is disposed of.

5. Parties to act on authenticated copy of this order.